

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs April 2, 2007

**PAUL L. IVY v. TENNESSEE DEPARTMENT OF CORRECTION, ET AL.**

**Appeal from the Chancery Court for Wayne County  
No. 11596 Stella Hargrove, Chancellor**

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**No. M2005-02339-COA-R3-CV - Filed on April 27, 2007**

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While an inmate at the South Central Correctional Facility (“SCCF”), Paul L. Ivy was found guilty by the prison disciplinary board of possession of security threat group (“STG”) material. Mr. Ivy challenged the conviction by filing a petition for writ of certiorari in the Wayne County Chancery Court. The Tennessee Department of Correction (“TDOC”) filed a motion to dismiss, which was granted by the trial court. After careful review, we vacate the judgment of the trial court and remand for entry of an order granting Mr. Ivy’s writ of certiorari.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated;  
Case Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Paul L. Ivy, *pro se* Appellant.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Bradley W. Flippin, Assistant Attorney General, Nashville, Tennessee, for the Appellee, Tennessee Department of Correction.

**OPINION**

***I. Background***

A correctional officer at SCCF confiscated a book from Mr. Ivy’s belongings during a reasonable suspicion search of his cell on December 28, 2004. The officer charged Mr. Ivy with the disciplinary offense of possession of STG material. At the disciplinary hearing, the South Central Correctional Facility Disciplinary Board (“the Board”) considered the following evidence: the correctional officer’s testimony that the book “appeared” to be STG material; the correctional officer’s disciplinary report which stated that the officer “did recover a book that contained what

appeared to be STG material;” and the book itself. The Board found Mr. Ivy guilty of the offense charged, for which he was sentenced to five days of punitive segregation and a \$5 fine.

After exhausting his appeals within the TDOC system, Mr. Ivy then filed a *pro se* petition for common-law writ of certiorari in the Chancery Court for Wayne County.<sup>1</sup> In his petition, Mr. Ivy challenged the Board's actions as illegal, arbitrary, and vindictive. Mr. Ivy alleged that there was no evidence to support the charge of possession of STG material; the chairman of the Board falsified information on the Disciplinary Report Hearing Summary; and the Board failed to follow TDOC's Uniform Disciplinary Procedures, thus violating Mr. Ivy's due process rights. TDOC filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Tenn. R. Civ. P. 12.02(6). The trial court granted TDOC's motion to dismiss, finding that Mr. Ivy made “only baseless and unsupported allegations that the Board acted illegally, arbitrarily, and vindictively.” Mr. Ivy appeals.

## ***II. Issue Presented***

On appeal, Mr. Ivy argues that the trial court erred in granting TDOC's motion to dismiss his petition for writ of certiorari.

## ***III. Analysis***

In this case, the trial court granted TDOC's motion to dismiss instead of granting or denying Mr. Ivy's petition for writ of certiorari. A common-law writ of certiorari is not available as a matter of right. It is an extraordinary judicial remedy that is addressed to the trial court's discretion. *Robinson v. Traughber*, 13 S.W.3d 361, 364 (Tenn. Ct. App. 1999); *Fite v. State Bd. of Paroles*, 925 S.W.2d 543, 544 (Tenn. Ct. App. 1996); *Boyce v. Williams*, 389 S.W.2d 272, 277 (Tenn. 1965); *Blackmon v. Tennessee Bd. of Paroles*, 29 S.W.3d 875, 878 (Tenn. Ct. App. 2000). By granting the writ, a trial court orders the lower tribunal to file its administrative record so the court can determine whether the petitioner is entitled to relief. *Harmer v. Tennessee Dep't of Corr.*, No. E2006-00333-COA-R3-CV, 2006 WL 1864017, at \*2 (Tenn. Ct. App. E.S., filed July 6, 2006). The writ permits a court to examine the lower tribunal's decision to determine whether the tribunal exceeded its jurisdiction or acted illegally, fraudulently, or arbitrarily. *Turner v. Tennessee Bd. of Paroles*, 993 S.W.2d 78, 80 (Tenn. Ct. App. 1999).

As we have stated previously, a motion to dismiss is not the appropriate means of dealing with an inmate's petition for writ of certiorari because it does not give the trial court an opportunity to consider all of the evidence from the disciplinary hearing. See *Ivy v. Dep't of Correction*, No. M2001-01219-COA-R3-CV, 2003 WL 22383613, at \*2. As in Mr. Ivy's previous appeal, in which TDOC also failed to file the disciplinary record with the trial court, we said:

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<sup>1</sup>Mr. Ivy named several defendants in his petition, including TDOC; SCCF Warden Kevin Myers; correctional officer Sean Brantley; and Amanda Morton, Linda Haddock, and Sherry Eis, who were members of the disciplinary board that convicted Mr. Ivy of possession of STG material. The individual defendants filed a motion to dismiss, which was granted by the trial court on July 12, 2005, thus leaving TDOC as the sole remaining defendant. On appeal, Mr. Ivy does not contest the trial court's order of dismissal as to the individual defendants.

We are left to consider the issues with only the portions of the record that have been filed by the prisoner. These papers are not adequate, or even appropriate, substitutes for the official record. None of the documents are certified; many bear little indicia of authenticity; and they are not accompanied by a certification that they are the complete record of the disciplinary proceeding at issue.

*Id.* In spite of our previous remonstrations, TDOC has inexplicably chosen to file a motion to dismiss, rather than filing the official record of Mr. Ivy's disciplinary proceedings. TDOC even admitted in its brief that a trial court "is in a better position to review the merits of a petition for writ of certiorari when a complete and accurate record of the disciplinary proceedings has been filed with the court." In this case, the defendant's attempt to expedite the resolution of this case has only resulted in protracted litigation.

The sole purpose of a Tenn. R. Civ. P. 12.02(6) motion to dismiss is to test the sufficiency of the complaint, not the strength of the plaintiff's evidence. *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999); *Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.*, 986 S.W.2d 550, 554 (Tenn. 1999). It admits the truth of all the relevant and material factual allegations in the complaint but asserts that no cause of action arises from these facts. *Winchester v. Little*, 996 S.W.2d 818, 821-22 (Tenn. Ct. App. 1998); *Smith v. First Union Nat'l Bank*, 958 S.W.2d 113, 115 (Tenn. Ct. App. 1997). Therefore, we must construe the complaint liberally in favor of Mr. Ivy by taking all factual allegations in the complaint as true, *Stein v. Davidson Hotel*, 945 S.W.2d 714, 716 (Tenn. 1997), and by giving him the benefit of all the inferences that can be reasonably drawn from the pleaded facts. Robert Banks, Jr. & June F. Entman, *Tennessee Civil Procedure* § 5-6(g), at 254 (1999). Dismissal under Tenn. R. Civ. P. 12.02(6) is warranted only when the alleged facts will not entitle the plaintiff to relief or when the complaint is totally lacking in clarity and specificity. *Dobbs v. Guenther*, 846 S.W.2d 270, 273 (Tenn. Ct. App. 1992). On appeal, we review the trial court's legal conclusions regarding the adequacy of the complaint *de novo* with no presumption of correctness. *Bell*, 986 S.W.2d at 554; *Stein*, 945 S.W.2d at 716.

In his petition, Mr. Ivy alleged that the chairman of the Board intentionally falsified evidence on the Disciplinary Report Hearing Summary. Mr. Ivy asserted that the falsification of items on that form was a violation of TDOC Policy No. 502.01, which requires, among other things, that disciplinary proceedings be conducted in a "fair and impartial" manner and that the summary form provide an accurate account of the hearing.<sup>2</sup> Mr. Ivy also alleged that the Board found him guilty as retaliation for Mr. Ivy having assisted other inmates in drafting legal documents. Mr. Ivy asserted that such behavior was also a violation of his right to a fair and impartial hearing as mandated by TDOC Policy No. 502.01. Mr. Ivy also stated in his petition that there was no evidence to support his conviction, citing to TDOC Policy No. 502.05, which defines the offenses for which an inmate

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<sup>2</sup>TDOC Policy No. 502.01(V) provides in relevant part: "Fair and impartial disciplinary proceedings will be administered against inmates charged with disciplinary infractions." TDOC Policy No. 502.01(VI)(E)(3)(k)(5) states that the form summarizing the disciplinary hearing (also known as Form CR-1834) must, among other things, state "detailed reasons for the board's . . . decision and summariz[e] the evidence which led to such decision."

can be disciplined. Mr. Ivy stated that these alleged violations of TDOC's Uniform Disciplinary Procedures resulted in a conviction for a Class A disciplinary offense, a sentence of five days of punitive segregation, a \$5 fine, an extended delay at a higher and more restricted security level, resulting in a later release date, a twelve-month package restriction, and a denial of sentence credits.<sup>3</sup>

The Tennessee Supreme Court has held that allegations that a disciplinary board violated its own Uniform Disciplinary Procedures may state a claim for relief in certain circumstances:

A prisoner seeking judicial review of a prison disciplinary proceeding states a claim for relief under common-law writ of certiorari if the prisoner's complaint alleges facts demonstrating that the disciplinary board failed to follow the Uniform Disciplinary Procedures and this failure substantially prejudiced the petitioner. Thus, for Tharpe to survive a motion to dismiss, his petition must allege that the disciplinary board followed an unlawful procedure and that he was substantially prejudiced thereby.

*Willis v. Tennessee Dep't of Correction*, 113 S.W.3d 706, 713 (Tenn. 2003).

As we have stated already, a motion to dismiss does not assess the merits of the petitioner's complaint; rather, we merely assess the sufficiency of the complaint. Taking all of the allegations set forth by Mr. Ivy as true, we are compelled to conclude that he has stated a claim for which relief is available through a common-law writ of certiorari. Mr. Ivy has set forth numerous violations of TDOC's Uniform Disciplinary Procedures by which he was substantially prejudiced in the form of a monetary fine, punitive segregation, and possibly other punishment as well. Therefore, we are obligated to reverse the trial court's dismissal of this case and give Mr. Ivy an opportunity to prove the truth of his allegations.

#### ***IV. Conclusion***

In summary, we find that the allegations in Mr. Ivy's petition, which we are required to accept as true for the purpose of a motion to dismiss, do state a claim upon which relief may be granted under a common-law writ of certiorari. Therefore, we vacate the judgment of the trial court and remand for the entry of an order granting Mr. Ivy's writ of certiorari and directing TDOC to file the administrative record with the trial court. The trial court shall then address the substance of Mr. Ivy's claims in light of the record of the disciplinary proceedings. Costs on appeal are assessed to the Appellee, the Tennessee Department of Correction.

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<sup>3</sup> Although the Disciplinary Report Hearing Summary does not list all of these punishments, instead containing only the fine and punitive segregation, we are required to assume the truth of everything in Mr. Ivy's complaint.

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SHARON G. LEE, JUDGE